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Extractive Industries and Sustainable Job Creation

**Legal framework for the mining industry in Sudan:
Historical background and planning for the next decade**

By

Ibrahim Mohamed Ibrahim,
Head of Legal Department,
Ministry of Minerals, Republic of the Sudan

The views expressed are those of the author and do not necessarily reflect
the views of UNCTAD.



Republic of Sudan
Ministry of Minerals

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Cubic Globe



Background

- Before its independence the Geological Survey Office was established in 1904 and Mr. J Baron was appointed as the Government Geologist
- In 1956 Mr. Mahmoud AH Abdallah was appointed as the General Manager of Sudan Geological Department after the colonization era.
- No institutional provisions were promulgated.



The Laws

- Since 1998 a plethora of concern was paid to the mining industry. The Legislator in the constitutions of 1998 and 2005 stated clearly that the ownership of all mineral resources and underground resources is vested on the state and the relevant federal ministries are responsible to organize the optimum means of exploiting these resources.
- The 2005 Transitional Constitution of the Sudan provided general framework for the conservation of the environment in administering natural resources.
- The Presidential Decree no (32) filled the gaps in the 2005 constitution. The Decree detailed the responsibilities of the Ministry of Minerals and it positioned it as the sole authority responsible for mining Sudan.

- Mining and Quarries Act 1959
- Mining and Quarries Act 1972
- The Mineral Wealth and Mining Development Act 2007
- The Mineral Wealth and Mining Resources Development Act 2015
- Investment Encourage Act
- The Environment Protection Act 2001

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Other legal Docs

- The 2012 Regulations for organizing the exploitation of Mineral resources.
- The Artisanal Mining Regulation 2010 and its amendments.
- The Proposal of the New Mining Regulations 2015.
- The Proposal of the New Regulations for Artisanal Mining.
- The Order of Establishing GRAS 2007.



Features of 2015 Act

- Established the Higher Council for Mining chaired by the President constituted of the relevant Ministers and State Governors
- The Council is the highest authority responsible for mining affairs and is functioned inter alia to solve any discrepancies between the different levels of the government



Technical Mining Committee

- Chaired by the Undersecretary and composed of the Director General of GRAS and other members representing the bodies in connection and some experts
- The committee is responsible to receive and study all applications
- Recommend to the Minister to approve Licenses, grant concessions, tax exemptions and any other issues



Ownership of Mineral Materials

- Art 8 ownership of mineral resources is vested on the state and it holds the exclusive right for exploration and prospecting it
- The Minister of Minerals is authorised to conclude the mining agreements or to issue the mining lease after recommendation of the Technical Mining Committee.



Proposed Regulations

- Organizing of Exploitation of Mineral resources:
- Radioactive minerals
- Compensation of land ownership
- Precious stones and rare elements



Artisanal Mining Regulations

- Role of states and localities
- Role of investors in the sector
- Role of artisanal miners
- Legalization
- Promotion to small scale mining



Licensing

- Mining and prospecting without license is prohibited and constitute a crime according to Art 32 and 33.
- Types of Licenses and Mining Contracts
- General prospecting License
- Exclusive exploration license
- Mining Contract
- Small Mining Contract
- Traditional Mining Contract
- Extracting Minerals and industrial rocks

- Condition of obtaining license and fees and responsibility are enshrined clearly in the Act
- Agreement for Mining is introduced in the Act and the Minister is authorized to conclude it.
- The Type of the agreement is a concession agreement the government grant the other party the exclusive right to explore and exploit the minerals in the specified area for the life time of the agreement.



The Concession Agreements

- Concluded between the government and the investor, national or foreigner needs to register Company.
- The Contractor granted exploration right for specified period vary between 4 to 6 years depends on the availability of data and the location of the Block.
- Initial exploration period of 3 or 2 years plus two extension periods up on the reports and the progress of works on the site.
- Work program and budget to be discussed and approved by the government.
- The Investor shall enjoy tax and custom exemptions during the exploration period and its extensions.

During or after the exploration period and when ever a mineral discovery is declared, a visibility study to be prepared and approved.

The production Company to be established on which the government shall be granted 30% free carried interest.

- The investor is entitled to recover all capitalized preproduction cost in a manner to be agreed
- The Company have the right to export its products and convert its money.
- Relinquishment 50% after the initial exploration period + 25% after the first extension
- Environment protection chapter is included
- Environmental impact assessment is prerequisite
- Employing of Sudanese and train them is required.



Investment Protection

- Sudan Concluded 34 BITs and Multilateral investment agreements which provide investment protection.
- Arbitration in Accordance with the Sudan Arbitration Act 2005 also provide .
- International Arbitration in Accordance with the Provisions of the Concession Agreement and the BITS and Multilateral Agreements.



Stabilization Clause

- Inserted in the concession agreement (CA)
- Economic equilibrium measurement is adopted in the new version of CAs
- Rigid SC in the old version
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Regulatory Bodies

- Geological Research Authority of Sudan (GRAS according to the 2015 Act and its order of establishing 2007 is a technical body and set for research and planning
- Sudan Mineral Resources Co (SMRC) 100% owned by the government and delegated to inspection and monitoring of mining industry and holding the shares of the state in the mining companies.
- SUDAMIN service company



Mining Companies

- 166 COs holding concession agreements represent the biggest numbers of mining companies in the region.
- About 198 Small scale mining companies
- Artisanal miners estimated 1million person working o this field.



challenges

- No effective environmental law or regulation the 2001 Act and its regulations is not updated to cope the evolving trend in the mining industry and the environmental aspects in this field.
- No health and safety act or regulation that can protect investors or their employees from incidents
- Interference of the states and localities and even the local communities with the operation of the mining industry



Backups

- A new environmental Act is drafted and submitted to ministry of cabinet
- The new Mining Regulation includes a chapter governing the environmental issues in the mine side.
- A new chapter of health and safety is inserted in the 2015 Mining Regulation.
- The presidency endorsed decrees and orders to the states and localities to refrain from interference with the mining industry.



Conclusion and Recommendations

- Priority to the Exploitation of the Mining and petroleum resources should be enshrined in the constitution.
- A separate environment conservation regulations should be endorsed in coordination with the Ministry of Environment.
- Health and Safety Aspects should be regulated in a separate legislation and all stakeholders should be involved in drafting it.
- Provisions of radio active minerals should be attached to the federal law
- Open the membership of the mining committee to include representative of all connected ministries and departments
- Priority of exploitation minerals and petroleum should be stated clearly in the constitution and all laws
- Endeavour with African community to establish dispute settlement mechanism for the investment like those in ECT and NAFTA

